

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

EVA SHARP, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

SAFEWAY INC. and DOES 1 through 50,
inclusive,

Defendants.

Case No. 2011-1-CV-202901

**ORDER RE: MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

The above-entitled matter came on for hearing on Friday, October 18, 2019, at 9:00 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding. The Court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Thursday, October 17, 2019. No party contested the tentative ruling; therefore, the Court orders the tentative ruling be adopted as the Order of the Court, as follows:

I. INTRODUCTION

This is a class action for recovery of penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). Plaintiff Eva Sharp (“Plaintiff”) worked as a cashier for defendant Safeway, Inc. (“Defendant”) in California. (Complaint, ¶¶ 3-4.) Plaintiff alleges Defendant failed to provide Plaintiff and the other putative class members with seats.

(Complaint, ¶ 17.) The Complaint, filed on June 13, 2011, sets forth a single PAGA cause of action.

On July 16, 2018, the Court granted Plaintiff's motion for class certification. The parties have now reached a PAGA settlement. Plaintiff moves for approval of the settlement, in addition to decertification of the class.

II. DISCUSSION

A. Decertification of Class

As stated previously, the Court certified a class on July 16, 2018. Plaintiff moves to decertify the class in light of the PAGA settlement. Upon further reflection, the Court takes note that there is only a single PAGA cause of action in the Complaint. In other words, there are no causes of action in the Complaint for which a class could be certified.

Under these circumstances, the Court exercises its inherent authority to reconsider interim orders and now finds the motion for class certification should have been denied. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108.) The July 16, 2018 order is amended to DENY the motion for certification. Consequently, there is no class to decertify. This is solely a PAGA action.

B. Legal Standard

A court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (1)(2).) The proposed settlement must be submitted to the Labor and Workforce Development Agency ("LWDA") at the same time it is submitted to the court. (*Ibid.*)

As discussed by one court:

PAGA does not establish a clear standard for evaluating PAGA settlements. . . . Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

Courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel v. Nike Retail Services, Inc.*, *supra*, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the following are relevant to

1 evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense,
2 complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the
3 extent of discovery completed and the stage of the proceedings; (5) the presence of government
4 participation; and (6) the expertise and views of counsel. (*Ibid.*)

5 **C. Settlement Terms**

6 Pursuant to the settlement, Defendant will pay a total amount of \$12,000,000.
7 (Declaration of Matthew Righetti in Support of Plaintiffs' Motion for Approval of Settlement
8 and Entry of Judgment, Ex. 1 ("Settlement Agreement"), ¶ 3.1.) This amount includes attorneys'
9 fees of \$4,200,000, litigation costs of \$185,443.28, an incentive award of \$20,000, and
10 settlement administration costs up to \$77,500. (See Settlement Agreement, ¶¶ 3.2-3.3;
11 Memorandum of Points and Authorities in Support of Plaintiff's Motion for Approval of
12 Settlement and Entry of Judgment, pp. 3:10-14, 17:23-25.) PAGA requires that 75% of the net
13 settlement fund be distributed to the LWDA. Consequently, \$5,626,875 is required to be paid to
14 the LWDA, while the remainder – \$1,875,625 – can be distributed on a pro rata basis to
15 aggrieved employees. Here, the distribution of amounts to aggrieved employees will based on
16 weeks worked at a checkstand as a food clerk checker.

17 In addition to the monetary recovery, Defendant has agreed to establish and implement a
18 two-year program to provide suitable seats to food clerk checkers working at front-end
19 checkstands in Defendant's California stores.

20 The claims administrator (Phoenix Settlement Administrators) will mail aggrieved
21 employees a simple notice informing them of the terms of the approved settlement and their pro
22 rata share of the monetary recovery.

23 **D. Settlement Evaluation**

24 Plaintiff asserts the total settlement amount constitutes about 5% of Defendant's potential
25 exposure in this action. Plaintiff states there were various factors weighing toward a discount of
26 the penalties, including the risk that the Court could exercise its discretion to reduce the amount
27 of penalties, and several arguments from Defendant such as its substantial disagreement
28 regarding the interpretation of certain statutory language and Defendant's "good faith" basis for

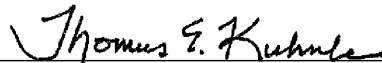
1 determining the nature of the work did not reasonably permit the use of seats. Plaintiff
2 concludes the case would likely boil down to a battle of the experts.

3 With regard to Plaintiff's attorneys' fees, Plaintiff provides a lodestar of \$2,116,215.50,
4 resulting in a multiplier of approximately 1.98. The fee amount is 35% of the gross settlement,
5 which is higher than the standard 33% in common fund cases. Nevertheless, given the duration
6 of this litigation, the large amount recovered, and that the multiplier falling within a reasonable
7 range, the Court finds the fee request is fair. The Court also approves the requested costs.

8 Plaintiff Eva Sharp requests an incentive award of \$20,000. She provides a declaration in
9 support of her request in which she states she spent approximately 50 hours on the case, plus
10 another 30-40 hours communicating with class counsel over the years. (Declaration of Eva
11 Sharp in Support of Motion for Approval of Settlement, ¶ 7.) The requested amount of \$20,000
12 is much higher than is generally awarded for incentive awards. As with the attorneys' fee
13 request, however, the Court finds the length of this litigation and the large amount recovered
14 merit a somewhat higher incentive award than other PAGA cases. The Court approves an award
15 of \$14,000.

16 Ultimately, the Court finds the settlement is fair, reasonable, and adequate. The motion
17 for approval of PAGA settlement is GRANTED, subject to the reduction in the incentive award.

18
19 Dated: October 21, 2019



Thomas E. Kuhnle
Judge of the Superior Court